

State of California
California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:

Metropolitan Condominium)	
Association)	Complaint No. R8-2008-0091
C/o Neuland, Nordberg, Andrews & Whiting)	for
A Professional Law Corporation)	Administrative Civil Liability
22502 Avenida Empressa)	
Rancho Santa Margarita, California 92688)	
)	
<u>Attn: Mr. Steven L. Rader</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Metropolitan Condominium Association (MCA) has violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), may impose administrative civil liability pursuant to California Water Code § 13385.
2. A hearing concerning this complaint will be held before the Regional Board within 90 days of the date of issuance of this complaint, unless MCA waives its right to a hearing. Waiver procedures are specified in this Complaint. If the hearing on this matter is not waived, the hearing will be held during the Board's regular meeting on January 23, 2009 at the City Council Chambers, 25541 Barton Road, Loma Linda, California. The meeting begins at 9:30 a.m. MCA or its representative will have the opportunity to appear and be heard and to contest the allegations in this complaint, and the imposition of civil liability by the Regional Board. An agenda for the meeting and the staff report pertaining to this item will be mailed to you not less than 10 days prior to the hearing date.
3. If the January 23, 2009 hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. MCA is alleged to have violated California Water Code §13376 by allowing waste (i.e. raw sewage) to be discharged to waters of the United States without filling a report of waste discharge in accordance with California Water Code §13260. MCA discharged an estimated 14,400 gallons of sewage to the City of Irvine municipal storm drain system and thence to the San Diego Creek.

5. This complaint is based on the following facts:

- a) MCA owns and operates The Metropolitan Condominiums (TMC) which consists of three buildings located at 2233, 2243 and 2253 Martin in the City of Irvine, County of Orange. There are 261 dwelling units within the three buildings. The condominium complex was built in the early 1990's.
- b) On April 9, 2008, Irvine Ranch Water District (IRWD) staff responded to TMC because of a complaint that a significant amount of water was seeping through the wall of the subterranean garage for the building at 2233 Martin. The rate of seepage was estimated by IRWD staff to be 10 gallons per minute (gpm). IRWD staff initially thought it was ground water seeping through the garage wall. There was no initial indication of the seepage being associated with a leak from the on-site sanitary sewer system.
- c) On April 10, 2008, IRWD staff again responded to TMC because of a second complaint of what was identified as sewage seeping through the garage wall and leaking from surcharged overhead sanitary sewer pipes in the subterranean garage for the building at 2233 Martin. IRWD discovered that because of tree roots that had grown into the sewer pipe and sewage debris, the on-site sewerage collection system serving two of three buildings was completely blocked, thus causing the on-site system to surcharge and leak out of numerous pipe joints. The leaking sewage drained to a storm drain sump pump in the subterranean garage, was being discharged to a street alley along the southern facility boundary, and then to a storm drain catch basin.
- d) IRWD staff observed that the soil in the landscape planter directly adjacent to the subterranean garage wall where the seepage was occurring was saturated with liquid. It was also determined that one of the on-site sewer pipes traversed beneath that planter and was adjacent to the garage wall. After the blockage in the on-site sewerage collection system was cleared and the system surcharging eliminated, the seepage through the garage wall stopped and the landscape planter dried to its normal moisture content.
- e) Based on information from the on-site personnel for the condominium complex, the subterranean garage wall had been continuously seeping liquid at a significant flow rate since at least April 7, 2008. All this seepage was being discharged to the storm drain catch basin by the sump pump in the subterranean garage. Based on the observations of the rate of seepage by IRWD staff on April 9 and April 10, it is reasonable to conclude that the discharge to the storm drain occurred for at least 24 hours. Therefore, the volume of discharge is estimated to be 14,400 gallons (10 gpm for 1,440 minutes in 24 hours).

- f) The storm drain catch basin into which the garage sump pump discharged conveys runoff to the municipal storm drain system maintained by the City of Irvine that ultimately drains into San Diego Creek (a water of the United States). None of the sewage discharged to the storm drain in the 24-hour period was recovered.
6. MCA does not have a permit to discharge sewage to the waters of the United States, and, therefore, is liable for unauthorized discharges of waste from its on-site sanitary sewer system in violation of California Water Code § 13376.
7. Pursuant to California Water Code § 13385(c), the Regional Board can administratively assess civil liability in an amount not to exceed the sum of the following:
- a. \$20,000 for two days of violation; and
 - b. \$134,000 at \$10 per gallon for each gallon over 1,000 gallons discharged, but not cleaned up $[(14,400 - 1,000) \text{ gallons} \times \$10/\text{gallon} = \$134,000]$
7. California Water Code §13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. These factors are evaluated in the following table:

Factor	Comment
A. Nature, Circumstance, Extent, and Gravity of Violation	<p>MCA is alleged to have violated California Water Code § 13376 by discharging approximately 14,400 gallons of sewage in a 24-hour period over two calendar days to the municipal storm drain operated by the City of Irvine. This storm drain is tributary to San Diego Creek, a water of the United States.</p> <p>The on-site sanitary sewer system (outside of the buildings) operated by MCA had not been thoroughly cleaned in at least six years. Because of this lack of routine maintenance, a root ball developed inside the sanitary sewer system that completely blocked all sewage flow through it. Efforts to clear the root ball were initially delayed because of the lack of</p>

	adequate records and knowledge of the configuration of the on-site sewer system. Only as a result of the efforts of IRWD was the blockage identified and located, and then cleared to restore the on-site sewer system to normal operation. None of the sewage discharged to the storm drain system was recovered.
B. Culpability	MCA is the owner and operator of The Metropolitan Condominiums and is, therefore, responsible for maintenance of the on-site sanitary sewer system. Therefore, MCA is fully culpable for the discharge of sewage from its sanitary sewer system.
C. Economic Benefit or Savings	California Water Code Section § 13385(e) specifies, among other things, that, at a minimum, liability shall be assessed at a level that recovers the economic benefit derived from the act(s) that constitutes the violation. MCA has failed to responsibly maintain the on-site sewer system to prevent the formation of root balls and other types of blockages. Based on the \$3,500 cost to MCA for sewer cleaning after the April 10, 2008 spill incident, and the plumbing company's recommendation of frequency of cleaning (twice yearly), Board staff determined that MCA benefited by as much as \$47,400 by not expending funds to perform sewer system maintenance for the past six years.
D. Prior History of Violations	There is no history of prior violations.
E. Other Factors	Staff has spent approximately 68 hours investigating this incident with a corresponding total staff cost of approximately \$9,180.
F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed assessment.

8. After consideration of these factors, the Assistant Executive Officer proposes that a civil liability of \$60,200 be imposed on MCA for the violations cited above. This was calculated as follows:

- a. \$20,000 for two days of violation; and
 - b. \$40,200 for 13,400 gallons discharged @ \$3.00 per gallon.
9. If MCA wishes to waive its right to a hearing, please sign the attached waiver form, which is on Page 6 of this Complaint, and return it, together with a check payable to the State Water Resources Control Board in the amount of \$60,200. Send the check and the signed waiver form to:

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348
Attention: Stephen D. Mayville

If you have any questions concerning this Complaint, please contact Stephen D. Mayville at (951) 782-4992.

12/5/08

Date

Kurt V. Berchtold

Kurt V. Berchtold
Assistant Executive Officer

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Waiver of Hearing

On behalf of Metropolitan Condominium Association, I agree to waive its right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2008-0091. I am enclosing a check for \$60,200 made payable to the State Water Resources Control Board. I understand that I am giving up the right of Metropolitan Condominium Association to be heard and to argue against the allegations made by the Assistant Executive Officer in Complaint No. R8-2008-0091, and against the imposition of, and amount of, civil liability.

Date

for Metropolitan Condominium Association